

# **Title 24 DEPARTMENT OF COMMERCE**

## **Subtitle 05 ECONOMIC DEVELOPMENT**

### **Chapter 27 More Jobs for Marylanders**

**Authority: Corporations and Associations Article, §1-203.1; Economic Development Article, §§2-108 and 6-801—6-809; Tax-General Article, §§10-741 and 11-411; Tax-Property Article §9-110; Annotated Code of Maryland**

#### **.01 Objective.**

The objective of the More Jobs for Marylanders Program is to increase the number and quality of new manufacturing jobs in the State and non-manufacturing jobs in opportunity zones.

#### **.02 Purpose.**

This chapter describes the procedures used by the Secretary of Commerce to establish the requirements necessary to qualify for the More Jobs for Marylanders Program.

#### **.03 Scope and Administration.**

Certification for the More Jobs for Marylanders Program is administered by the Secretary of Commerce. The Secretary of Commerce administers the sales and use tax refund and the More Jobs for Marylanders Sales and Use Tax Reserve Fund. The Comptroller administers the income tax credit and the More Jobs for Marylanders Tax Credit Reserve Fund. The Department of Assessments and Taxation administers the real property tax credit established under Tax-Property Article, §9-110, Annotated Code of Maryland, and the waiver of fees established under Corporations and Associations Article, §1-203.1, Annotated Code of Maryland.

#### **.04 Definitions.**

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) “Act” means the More Jobs for Marylanders Act at Economic Development Article, Title 6, Subtitle 8, Annotated Code of Maryland.

(2) “Benefit year” means any one of the 10 consecutive taxable years for which the qualified business entity is eligible to receive benefits under the Program.

(3) Business Entity.

(a) “Business entity” means a person conducting or operating a trade or business that is:

(i) Primarily engaged in activities that, in accordance with the North American Industrial Classification System (NAICS), United States Manual, United States Office of Management and Budget, 2012 Edition, would be included in Sector 31, 32, or 33; or

- (ii) Located in an opportunity zone.
- (b) “Business entity” does not include:
  - (i) A refiner, as defined in Business Regulation Article, §10-101, Annotated Code of Maryland;
  - (ii) A person conducting or operating a trade or business that is providing adult entertainment, as determined by the Department;
  - (iii) A person conducting a trade or business that is primarily engaged in retail activities, unless the person is operating a grocery store located in an opportunity zone;
  - (iv) A person conducting a trade or business that is primarily engaged in the sale or distribution of alcoholic beverages;
  - (v) A private or commercial golf course or country club;
  - (vi) A tanning salon; or
  - (vii) A bail bondsman.
- (4) “Comptroller” means the Comptroller of the Treasury or the Comptroller’s designee.
- (5) “Department” means the Department of Commerce.
- (6) “Eligible project” means a facility operated by a business entity in a Tier I area or Tier II area.
- (7) “Existing business entity” means a business entity that is located in the State at the time it notifies the Department under Regulation .05 of this chapter.
- (8) “Final application” means the application submitted by the qualified business entity for certification of the income tax credit for a benefit year.
- (9) “Final certificate” means the certificate of the income tax credit for a benefit year.
- (10) “Fiscal year” means the fiscal year of the State as defined in State Finance and Procurement Article, §2-101(a), Annotated Code of Maryland.
- (11) “Full-time position” means a position requiring at least 840 hours of an employee’s time during at least 24 weeks in a 6-month period (an average of 35 hours per week).
- (12) “Income Tax Credit Reserve Fund” means the More Jobs for Marylanders Tax Credit Reserve Fund established under Tax-General Article, §10-741(d), Annotated Code of Maryland.
- (13) “Initial application” means the application submitted by the qualified business entity to reserve the income tax credit against the Income Tax Reserve Fund for a benefit year.
- (14) “Initial certificate” means the certificate that the Secretary has reserved the income tax credit against the Income Tax Reserve Fund on behalf of the qualified business entity.
- (15) “New business entity” means a business entity that is not located in the State at the time it notifies the Department under Regulation .05 of this chapter.

(16) “Opportunity zone” means an area that has been designated as a qualified opportunity zone in the State under Internal Revenue Code, §1400Z-1.

(17) “Person” means an individual, corporation, business trust, partnership, limited liability company, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(18) “Program” means the More Jobs for Marylanders Program established under the Act.

(19) “Qualified business entity” means a new business entity or an existing business entity operating an eligible project under the Act.

(20) “Qualified personal property or services” means personal property or services purchased for use at an eligible project by a qualified business entity that is enrolled in the Program.

(21) Qualified Position.

(a) “Qualified position” means a position that:

(i) Is a full-time position;

(ii) Is of indefinite duration;

(iii) Is a position in a facility of a business entity that is located in an opportunity zone and pays an average annual salary that exceeds \$50,000;

(iv) Is a position in a facility of a business entity described in §B(3)(a)(i) of this regulation and pays at least 120 percent of the State minimum wage;

(v) Is located in the State;

(vi) Is newly created, as a result of the establishment or expansion of a business facility in a single location in the State; and

(vii) Is filled.

(b) “Qualified position” includes a position that satisfies the definition set forth in §B(21)(a) of this regulation for which there is a temporary vacancy that is filled within 4 months.

(c) “Qualified position” does not include a position that is:

(i) Created when an employment function is shifted from an existing business facility of the business entity located in the State to another business facility of the same business entity if the position does not represent a net new job in the State;

(ii) Created through a change in ownership of a trade or business;

(iii) Created through a consolidation, merger, or restructuring of a business entity if the position does not represent a net new job in the State;

(iv) Created when an employment function is contractually shifted from an existing business entity located in the State to another business entity if the position does not represent a net new job in the State; or

(v) Filled for a period of less than 12 months.

(d) “Qualified position” does not include a temporary training position but does include a permanent position which is filled by hiring a successful trainee from a temporary training position that does not exceed 3 months in length.

(22) “Sales and Use Tax Credit Reserve Fund” means the More Jobs for Marylanders Tax Credit Reserve Fund established under Tax-General Article, §11-411, Annotated Code of Maryland.

(23) “Secretary” means the Secretary of Commerce or the Secretary’s designee.

(24) “State” means the State of Maryland.

(25) “State minimum wage” is the minimum wage rate as defined in Labor and Employment Article, §3-413(c), Annotated Code of Maryland.

(26) “Tax credit” means the More Jobs for Marylanders income tax credit established under Tax-General Article, §10-741, Annotated Code of Maryland, or the More Jobs for Marylanders real property tax credit established under Tax-Property Article, §9-110, Annotated Code of Maryland.

(27) “Tier I area” has the definition set forth in §6-801(l) of the Act.

(28) “Tier II area” has the definition set forth in §6-801(m) of the Act.

## **.05 Notification Required.**

A. An existing business entity shall notify the Department of its intent to seek certification for a tax credit before hiring any employees to fill the qualified positions necessary to satisfy the requirements for a qualified business entity establishing or expanding the business facility on which the tax credit is based.

B. A new business entity shall notify the Department of its intent to seek certification for a tax credit before establishing its facility in the State.

## **.06 Enrollment Certification Procedures.**

A. A business entity may apply to the Department to enroll an eligible project in the Program if the eligible project:

(1) Is in a Tier I area and the business entity intends to create at least five qualified positions at the project location; or

(2) Is in a Tier II area and the business entity intends to create at least ten qualified positions at the project location.

B. A new business entity may be certified as a qualified business entity if the new business entity:

(1) Notifies the Department of its intent to seek designation of an eligible project before establishing its facility in the State; and

(2) Offers an ongoing job skills enhancement training program or postsecondary education program that is approved by the Department.

C. A new business entity shall submit an application to the Department on a form approved by the Department and shall include the following information:

- (1) The anticipated date of the establishment and initial operation of the facility and the nature of its operations;
- (2) The expected location of the facility;
- (3) The estimated number of qualified positions to be created and qualified employees to be hired and the anticipated payroll of the new qualified employees; and
- (4) Any other information required by the Department.

D. An existing business entity may apply to be certified as a qualified business entity if the existing business entity increases the number of qualified positions as required under 你 of this regulation for an eligible project in a Tier I area or a Tier II area.

E. An existing business entity may be certified as a qualified business entity if the business entity:

- (1) Notifies the Department of its intent to seek designation of an eligible project prior to hiring any employees to fill the qualified positions necessary to meet the requirements of the Act; and
- (2) Offers an ongoing job skills enhancement training program or postsecondary education program that is approved by the Department.

F. An existing business entity shall submit an application to the Department on a form approved by the Department and shall include the following information:

- (1) The number of full-time employees existing before the expansion and the payroll of the existing employees;
- (2) The estimated number of qualified positions to be created and qualified employees to be hired and the anticipated payroll of the new qualified employees; and
- (3) Any other information required by the Department.

G. Time to Hire.

(1) A business entity shall begin hiring the employees to fill the qualified positions necessary to meet the requirements of the Act within 12 months after it notifies the Department of its intent to seek designation of an eligible project.

(2) A business entity shall hire the employees to fill the minimum number of qualified positions required under §A of this regulation within 12 months after it hires the first employee to fill the qualified positions necessary to meet the requirements of the Act.

H. If a business entity satisfies the definition of qualified business entity, the Secretary shall provide to the qualified business entity an initial certificate that:

- (1) Certifies the eligible project that is enrolled in the Program;
- (2) Provides the duration of the certification; and

(3) Provides any additional information necessary for the Comptroller and Department to administer the Program.

I. On enrollment in the Program, a qualified business entity is eligible for the benefits described in Regulation .10 of this chapter.

J. The Department may not provide a qualified business entity a certificate after the date specified in Economic Development Article, §6-805, Annotated Code of Maryland.

K. If at any time the qualified business entity ceases to operate the eligible project, the qualified business entity shall give notice to the Department.

## **.07 Eligible Business Activities.**

A. To qualify for the tax credit, a qualified business entity shall establish or expand a business facility in the State that is primarily engaged in manufacturing or any other business activity in an opportunity zone not excluded by Regulation .04B(3)(b) of this chapter.

B. In determining whether a business facility is engaged in a manufacturing activity, the Department shall consider the definitions set forth in the U.S. Department of Labor's Standard Industrial Classification Manual.

## **.08 Income Tax Certification Procedures.**

A. First Benefit Year. For each eligible project, a qualified business entity may submit an initial application no sooner than July of the fiscal year following the close of the first fully completed fiscal year that the qualified business entity is enrolled in the Program under Regulation .06F of this chapter and the business entity claims a Program benefit.

B. Subsequent Benefit Years.

(1) For each eligible project, a qualified business entity may submit an initial application no sooner than July of the fiscal year following the fiscal year referenced under §A of this regulation.

(2) A business entity shall receive a final certificate for a previous benefit year before submitting an initial application.

C. Application Window.

(1) The Department shall establish the period during the fiscal year for accepting initial applications for the purposes of determining priority under Regulation .09 of this chapter.

(2) The Department may establish more than one period during the fiscal year for accepting initial applications.

D. A qualified business entity that receives an initial certificate may submit a final application at any time.

E. Limitations.

(1) For any fiscal year, the Department may not issue initial tax credit certificates for credit amounts in the aggregate totaling more than \$9,000,000 in a fiscal year.

(2) For each eligible project, a qualified business entity may not submit more than one initial application in a fiscal year except as provided in §E(3) of this regulation.

(3) A qualified business entity may submit an initial application during each period within the fiscal year established by the Department under §C(2) of this regulation.

(4) A qualified business entity shall receive a final certificate for a previous benefit year before submitting an initial application.

(5) The amount of the tax credit in the final certificate may not exceed the reserved amount from the initial certificate.

## **.09 Priority of Funding for Initial Certificates.**

A. The Department shall approve initial applications submitted under Regulation .08 based on the following priority order:

- (1) An eligible project in a Tier I area that received a final certificate in the previous fiscal year.
- (2) An eligible project in a Tier II area that received a final certificate in the previous fiscal year.
- (3) An eligible project in a Tier I area that did not receive a final certificate in the previous fiscal year.
- (4) An eligible project in a Tier II area that did not receive a final certificate in in the previous fiscal year.

B. If there are unencumbered funds remaining, the Department may:

- (1) Carry forward the unused balance to the next fiscal year;
- (2) Establish one or more additional periods during the fiscal year for accepting initial applications; or
- (3) Issue credits on a first-come first-served basis during the fiscal year until fiscal year funding is exhausted.

## **.10 Program Benefits.**

A. The Program benefits authorized under this regulation may be claimed by a qualified business entity for up to 10 consecutive benefit years.

B. On enrollment in the Program:

- (1) A new business entity in a Tier I area is eligible for:
  - (i) A credit against the State income tax, established under Tax-General Article, §10-741(b), Annotated Code of Maryland;
  - (ii) A credit against the State property tax, established under Tax-Property Article, §9-110, Annotated Code of Maryland;
  - (iii) A refund of sales and use tax paid during the immediately preceding taxable year, as provided under Tax-General Article, §11-411, Annotated Code of Maryland; and

(iv) A waiver of fees charged by the State Department of Assessments and Taxation, established under Corporations and Associations Article, §1-203.1, Annotated Code of Maryland; and

(2) Except as provided in §C of this regulation, an existing business entity that operates an eligible project is eligible for a credit against the State income tax, established under Tax-General Article, §10-741(b), Annotated Code of Maryland.

C. The income tax credit established under Tax-General Article, §10-741(b), Annotated Code of Maryland, is not available to an existing business entity if the entity moves its facility to another county in the State on or after June 1, 2017.

D. If the number of qualified positions at the eligible project decreases to a number less than the number established in the first benefit year, the project shall be removed from the Program and all Program benefits terminate.

## **.11 Amount of Tax Credit.**

A. The income tax credit earned under this regulation is equal to the product of:

(1) The State employer withholding amount, which is equal to the highest tax rate listed in Tax-General Article, §10-105(a), Annotated Code of Maryland; and

(2) The total amount of wages paid for each qualified position at an eligible project.

B. Earning the Tax Credit.

(1) First Benefit Year. The income tax credit is earned by the qualified business entity at the end of the 12-month period during which the requisite number of qualified positions have been filled at each eligible project and the business entity claims a Program benefit.

(2) Subsequent Benefit Years. The income tax credit is earned by the qualified business entity at the end of each new 12-month period during which the requisite number of qualified positions have been filled at each eligible project.

(3) The 12 months need not be consecutive.

C. Claiming the Tax Credit.

(1) To claim the income tax credit approved by the Department, the qualified business entity shall file with the Comptroller an income tax return for the taxable year in which the income tax credit is earned and attach a copy of the Department's certificate of the approved credit amount to the income tax return.

(2) A qualified business entity may claim a refund in the amount, if any, by which the unused excess exceeds the State tax for the taxable year.

(3) The tax credit may not be claimed against taxes resulting from the sale of the eligible project without the written consent of the Secretary.

(4) The same tax credit may not be applied more than once against different taxes by the same taxpayer.

## **.12 Sales and Use Tax Refund.**



A. A qualified business entity may apply to claim the refund of sales and use tax paid during the immediately preceding calendar year for a sale of qualified personal property or services purchased solely for use at the eligible project.

B. Limitations.

(1) A qualified business entity shall be enrolled in the Program under Regulation .06 of this chapter to be eligible for a refund of sales and use tax paid for any benefit year.

(2) A qualified business entity shall continue to operate the eligible project for the calendar year in which the sales and use tax was paid.

(3) The purchase of qualified personal property and services was made on or after January 1, 2018.

(4) A qualified business entity may submit an application for refund on or after January 1 of the calendar year immediately following the purchase of the qualified personal property or services.

(5) The Department may not issue sales and use tax refunds in amounts in the aggregate totaling more than \$1,000,000 in a fiscal year.

C. Application for Refund.

(1) The application for refund shall contain the following information:

(a) A description of property or service purchased;

(b) The date of sale;

(c) The amount of sale;

(d) The amount of sales and use tax paid;

(e) The name of the persons or entities to whom the sales and use tax was paid;

(f) Copies of invoices and payment evidencing the sale or purchase;

(g) A statement allowing the Department to have access to any information provided to the Comptroller or another appropriate agency by a qualified business entity in connection with eligibility for refund allowed under this regulation; and

(h) Any other information that the Department requires.

(2) To the extent that funds are available in the Sales and Use Tax Reserve Fund, the Department shall issue a refund in an amount equal to the amount claimed by the qualified business entity under §C(1) of this regulation and approved by the Department.

D. The Comptroller retains its audit authority under the Tax-General Article, Annotated Code of Maryland.

E. Carryover. If the aggregate amount of sales and use tax refunds issued in a fiscal year totals less than the maximum provided under §B(5) of this regulation, the Department shall transfer the excess amount to the More Jobs for Marylanders Tax Credit Reserve Fund established under Tax-General Article, §10-741, Annotated Code of Maryland.

### **.13 Real Property Tax Credit.**

A. A qualified business entity may apply to claim a credit against the State's portion of the tax imposed on real property owned by either:

- (1) A new manufacturer that locates in a Tier I Area; or
- (2) A new non-manufacturer that locates in a Maryland opportunity zone.

B. Amount of Real Property Tax Credit.

- (1) A new manufacturer in a Tier I area is entitled to a 100 percent credit against the State real property tax.
- (2) A new non-manufacturer in a Maryland opportunity zone is entitled to a State real property tax credit of the lesser of:
  - (a) 100 percent of the State real property tax; or
  - (b) \$250 per qualified position.

C. Request for Credit. The eligible qualified business entity shall submit a request for the credit against the State's portion of the real property tax to the State Department of Assessments and Taxation.

D. Limitations.

- (1) A qualified business entity shall be enrolled in the Program under Regulation .06 of this chapter.
- (2) A new business that leases a facility does not qualify for the State real property tax credit.
- (3) The property tax credit provided under this regulation does not affect the amount of the county or municipal corporation property tax imposed on the property.

### **.14 Information Required from Entity.**

A. To be eligible to receive the tax credit, a business entity shall notify the Department in writing of its intention to use the tax credit before hiring the qualified positions necessary for establishing or expanding a facility.

B. To obtain an initial certificate, the qualified business entity shall provide the Department with a completed initial application.

C. To obtain a final certificate, the qualified business entity shall provide the Department with a completed final application.

### **.15 Sharing of Information.**

A. The Department shall require that any information provided under this chapter be verified including by an independent certified public accountant that the qualified business entity selects.

B. Any information provided to the Comptroller or the appropriate agency by a qualified business entity in connection with eligibility for a tax credit allowed under this chapter shall be shared by the Comptroller or the appropriate agency with the Department.

C. Information provided under §B of this regulation shall be subject to the confidentiality requirements applicable to the Comptroller or the appropriate agency.

## **.16 Waiver.**

The Secretary may waive or vary particular provisions of this chapter to the extent that the waiver is not inconsistent with the Act if:

A. Conformance to the requirement of any federal, State, or local program necessitates waiver or variance of a regulation; or

B. In the determination of the Secretary, the application of a regulation in a specific case or in an emergency situation would be inequitable or contrary to the purposes of the Act.

### **Administrative History**

Effective date: April 4, 2022 (49:7 Md. R. 469)